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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/587,197	06/05/2000	Jack O. Cartner	CRT 2 0017	8327

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EXAMINER

PETRAVICK, MEREDITH C

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/587,197

Applicant(s)

CARTNER, JACK O.

Examiner

Meredith C Petravick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10,11,13,17,19,39,40 and 65-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10,11,13,17,19,39,40 and 65-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/5/2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 68-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant amended claim 68 to include the limitation, "which angles section together form a single corner of said deck." However in the body of the claim, the guard is not listed as part of the deck but merely as part of the mower deck. Further, the deck is recited as having four corners and the guard as being attached to the four sides of the deck. This new limitation cause the claim to be indefinite because it is unclear whether the deck and guard are separate parts attached to each other or the deck comprises the guard.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11, 13, 17, 65-66, 68-69 and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobey 3,496,707

Kobey discloses a mower including:

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- a deck (20) with at least four sides with at least three rigid side walls (40)
- at least one cutting blade (24)
- a guard (34)

The guard is attached via a hinge (42) between two sidewalls. The guard extends at obtuse angles from the sidewalls (Figure 1). The guard has two discrete segments that are angled from each other by ninety degrees (Fig. 2).

In regards to claims 66 and 69, an actuating member (52) is mounted on the deck and on the guard away from the hinge.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaguard et al. 5,657,620.

Kobey discloses the invention described above. However, Kobey uses a manually operated cable to open and close the guard instead of a hydraulic cylinder and piston assembly.

Like Kobey, Thaguard et al. discloses a guard on a mower deck, which opens and closes. Unlike Kobey, Thaguard et al. teaches providing a hydraulic cylinder and piston (182) for opening and closing the guard. Thaguard et al. teaches that this is one particularly preferred method (Column 6, lines 53-60).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the cable actuator of Kobey with a hydraulic cylinder and piston actuator, in order to facilitate operator ease.

7. Claims 39-40, 67, 70-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaguard et al.

Kobey discloses the invention described above. However, Kobey has a rigid sidewall on the guard instead of a flap.

Like Kobey, Thaguard et al. discloses a guard on a mower deck with a sidewall. Unlike Kobey, Thaguard et al. teaches making the sidewall a folding one-piece flap (Column 8, lines 33-44). The flap is spaced from a plane of the guard. Thaguard et al. teaches that this exposes the blade for cutting.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sidewall of the guard in Kobey, a flap as in Thaguard et al., in order to increase cutting efficiency by increasing exposure of the blade.

8. Claim 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobey in view of the MoTrim Boom Mower Brochure, cited by applicant.

Kobey discloses the claimed deck and guard assembly detailed above. However, the mower in Kobey is a push mower instead of a boom mower.

Like Kobey, the MoTrim Boom Mower Brochure discloses a mower head with a guard used to cut brush. Unlike Kobey, the mower deck and guard assembly is attached to a boom.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to alternately attach the mower deck and guard assembly of Kobey to a boom as in the Mo Trim Boom Mower Brochure, as one commonly know equivalent alternative means of moving a mower.

### *Response to Arguments*

9. Applicant's arguments filed 2/9/2004 have been fully considered but they are not persuasive.

#### Claim 65

In regards to claim 65, applicant argues that Kobey doesn't show a guard with a horizontal plane that is parallel to and spaced from the horizontal plane of the deck in one orientation of the guard. Claim 65 recites, "wherein a horizontal plane of said guard is parallel to, and spaced from, a horizontal plane of said deck in one orientation of said guard." The claim does not specify which planes on the deck and the guard it is referring to. Therefore, any planes can be considered. As seen in Figure 3, a plane formed by the top surface of the mower deck and a plane formed by the bottom surface of the guard are parallel to each other and spaced from each other by the width of either the mower deck or guard.

Further, in regards to claim 61, which is canceled, applicant points out that last office action stated that a plane of the deck and a plane of the guard where called co-planar. The plane of the deck and guard formed by the top surfaces is co-planar. The difference is which planes are considered.

## Claim 68

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the claims calls for more than two discretely angled section) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 68 as recited states that the deck has to have four sides and four corners, but does not say that the corners have to be right angles. The deck of Kobey includes four corners as seen in Figure 2. The claim merely calls for "a plurality of discretely angled sections which angled section together form a single corner of said deck." The claims does not limit the number of angle section to be more than 2 nor does it limit the angle to not 90 degrees.

## Claim 73

In response to applicant's argument that the claim requires the guard to be the first corner of the deck, claim 73 states, "the guard is positioned in a first corner of the deck" not that the deck is the first corner. Applicant is arguing something that is not claimed.

## Claim 72

In regards to applicant's argument that the guard of Kobey cannot be used on the MoTrim mower, Applicant seems to be arguing that the combination in the rejection was to replace only the guard of the mower deck in MoTrim with the guard in Kobey. That rejection would have been MoTrim in view of Kobey.

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However, the rejection was Kobey in view of MoTrim. The suggested combination was to attach the entire mower deck and guard assembly in Kobey to a boom as in Kobey. This is different from the combination argued by applicant.

### *Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

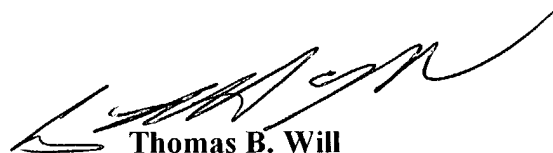
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith Petravick whose telephone number is 703-305-0047. The examiner can normally be reached on Monday-Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-308-1113. The fax number for this Group is 703-872-9306.

A handwritten signature in black ink, appearing to read 'T. B. Will', is written over the printed name.

**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

MCP  
April 2, 2004